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State v. Mitchell Appellant's Brief Dckt. 44136

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44136
Plaintiff-Respondent,)	
)	NEZ PERCE COUNTY NO. CR 1991-1115
v.)	
)	
ROB LEE MITCHELL,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Rob Mitchell appeals from the district court's order denying his Rule 35 motion for a reduction in sentence, and denying his motion for the appointment of counsel. Mindful that his Rule 35 motion was untimely filed, he asserts that the district court abused its discretion by denying his motions.

Statement of the Facts & Course of Proceedings

Rob Mitchell was found guilty of attempted murder and robbery, and he was sentenced to consecutive terms of 35 years, with fifteen years fixed for the robbery conviction, and fifteen years fixed for the attempted murder conviction. *State v. Mitchell*,

124 Idaho 374, 375 (Ct. App. 1993). The Court of Appeals affirmed his conviction and sentence in 1993. *Id.* at 378.

In March of 2016, Mr. Mitchell filed a pro se Rule 35 motion for a reduction of sentence asking the district court to amend his sentences either to run concurrently or to eliminate the indeterminate portion of the robbery sentence. (R., pp.8-10.) Mr. Mitchell also requested the district court appoint him counsel. (R., pp.11-14.) The district court denied both Mr. Mitchell's request for a reduction of sentence and his request for the appointment of counsel. (R., pp.17-19.) Mr. Mitchell filed a timely Notice of Appeal.

ISSUE

Did the district court abuse its discretion by denying Mr. Mitchell's Rule 35 motion and his motion for appointment of counsel?

ARGUMENT

The District Court Abused Its Discretion By Denying Mr. Mitchell's Rule 35 Motion And His Motion For Appointment Of Counsel

Mindful that Mr. Mitchell's Rule 35 motion was not timely filed and thus did not confer subject-matter jurisdiction upon the district court, Mr. Mitchell asserts the district court abused its discretion by denying his Rule 35 motion and his request for counsel.

A district court "may reduce a sentence within 120 days after the filing of a judgment of conviction[.]" I.C.R. 35(b). The applicable timely limitations "amount to jurisdictional restraints upon the ability of courts to reduce lawful sentences pursuant to I.C.R. 35." *State v. Rambo*, 121 Idaho 1, 2 (Ct. App. 1991) (citations omitted). A district court may deny an indigent defendant's request for counsel to assist in pursuing a Rule

35 motion, if the court finds the motion itself to be frivolous. *State v. Carter*, 157 Idaho 900, 902 (Ct. App. 2014).

Mindful of the above-authority, Mr. Mitchell asserts that the district court abused its discretion by denying his Rule 35 motion. In his Rule 35 motion, Mr. Mitchell stated that he would either like his sentences to run concurrently or to have the indeterminate term of his robbery sentence vacated, because he has 25 years of good behavior in prison, the prison is overcrowded, and he would like to see his elderly mother before she passes away. (R., p.9.) In light of this information, Mr. Mitchell asserts that the district court abused its discretion by denying his Rule 35 motion.

CONCLUSION

Mr. Mitchell respectfully requests that this Court remand his case to the district court with instructions to either order his sentences to run concurrently, or to vacate the indeterminate portion of his robbery sentence.

DATED this 30th day of September, 2016.

_____/s/_____
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30th day of September, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

ROB LEE MITCHELL
INMATE #35495
ISCI
PO BOX 14
BOISE ID 83707

JAY GASKILL
DISTRICT COURT JUDGE
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCP/eas